

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MACIE JO WARREN and LACIE
ELIZABETH WARREN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMES EUGENE WARREN, JR.,

Respondent-Appellant,

and

JENNIFER MAY SIMONS and MICHAEL
ALLEN MILLER, JR.,

Respondents.

UNPUBLISHED

July 20, 2006

No. 267208

Kalamazoo Circuit Court

Family Division

LC No. 04-000227-NA

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to his minor children pursuant to MCL 712A.19b(3)(g). We affirm.

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

The trial court did not clearly err when it found that the statutory ground was established by clear and convincing evidence. The trial court took jurisdiction over the minor children because of the children's mother's substance abuse and because respondent-appellant was incarcerated. Respondent-appellant did not ensure that the children were appropriately cared for, both when he separated from their mother and when he was incarcerated, and allowed the minor children to be in the care of their mother, who abused the drug Vicodin.

The trial court acknowledged respondent-appellant's drinking problem, but did not feel that it was the real impediment to respondent-appellant's ability to provide proper care and custody. The trial court focused on respondent-appellant's incarceration. Respondent-appellant was incarcerated for a third offense of OUIL for a year and, during that period of time, the minor children had been placed in the temporary care of the court. He was released from prison in February 2005 and incarcerated again for approximately three months in May 2005 for a parole violation. He was released from prison in August 2005 and incarcerated again in September 2005 because of another alleged parole violation, this time because components of a meth lab were found in the backyard of his mother's home, where he was residing. Respondent-appellant waived his right to a parole hearing and remained incarcerated at the time of the termination trial in November and December 2005.

It was unclear when respondent-appellant would be released from prison. Respondent-appellant's actions, that is the initial conviction for OUIL third offense, the parole violations, and the waiver of a parole violation hearing, resulted in his incarceration and unavailability to care for his children. At the time of the termination trial, the minor children were three and five years old and had been in foster care for a year and a half. Based on these circumstances, the trial court did not err in finding, with clear and convincing evidence, that respondent-appellant failed to provide proper care and custody and that he would be unable to provide proper care and custody within a reasonable time considering the ages of the minor children.

Moreover, the trial court did not err when it did not fully explore alternative relative placement for the minor children before terminating respondent-appellant's parental rights. Respondent-appellant did not provide the trial court with a plan involving proper care and custody of the minor children in his mother's home. In fact, respondent-appellant stated his desire that the children's mother retain her parental rights and care for the children. Only if that were not possible did respondent-appellant want his mother to adopt the children, although he had not confirmed by the termination trial that his mother was willing or able to do this.

Affirmed.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra